

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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|---------------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA | : | CRIMINAL NO. 4:12-CR-0011 |
| | : | |
| v. | : | (Judge Conner) |
| | : | |
| RICKY JEROME SMITH | : | |

ORDER

AND NOW, this 27th day of June, 2012, upon consideration of the motion (Doc. 59) to hold U.S. Attorney Simmers and standby counsel Stephen Becker in contempt for withholding discovery, delaying trial, and spoliation of evidence, filed on April 16, 2012, by *pro se* defendant Ricky Jerome Smith ("Smith"), wherein Smith alleges that Attorney Simmers belatedly complied with a court order directing the disclosure of discovery to Smith and withheld video footage (see Doc. 60; Doc. 61, at 1), and wherein Smith contends that Attorney Becker has failed to turn over the video footage as well as photographs taken of Smith on January 20, 2012, (Doc. 61, at 2), and upon further consideration of the response thereto by the government (Doc. 72), wherein the government states that Smith has been provided with the discovery materials and that the videos have been provided to standby counsel Attorney Becker, and the court noting that Smith has had the discovery materials from the government for at least three months, and it appearing that the delays in trial have been the result of the court's order of competency evaluation on April 12, 2012 (Doc. 57), and Smith's numerous motions, (see e.g., Docs. 18, 20, 25, 27, 32, 34, 36, 38, 40, 47, 49, 53, 62, 64, 66), and that Attorney Becker's ability to provide Smith with the video and photographs may be a result of Smith's

temporary transfer for purposes of the competency evaluation, and the court finding Smith's bald allegations of evidence spoliation to be unsupported and completely without merit, and the court therefore concluding that there is no basis to hold Attorney Simmers or Attorney Becker in contempt, it is hereby ORDERED that:

1. The motion (Doc. 59) to hold U.S. Attorney Simmers and standby counsel Stephen Becker in contempt for withholding discovery, delaying trial, and spoliation of evidence is DENIED.
2. Attorney Becker shall file a status report within seven (7) days of the date of this order informing the court of whether Smith has either received or viewed the videos and photographs that were in Attorney Becker's possession.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge